

(2) *Answer.* The certificate holder shall respond to the notification letter within thirty days after receiving it, unless the Secretary, in his discretion, grants a thirty day extension for good cause shown. The certificate holder shall respond specifically to the statement included with the notification letter and state in detail why the facts, conduct or circumstances described in the notification letter are not true, or if they are true, why they do not warrant the revoking or modifying of the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter.

(3) *Resolution of factual disputes.* Where material facts are in dispute, the Secretary and the Attorney General shall, upon request, meet informally with the certificate holder. The Secretary or the Attorney General may require the certificate holder to provide any documents or information that are necessary to support its contentions. After reviewing the statements of the certificate holder and the documents or information that the certificate holder has submitted, and upon considering other relevant documents or information in his possession, the Secretary shall make proposed findings of the factual matters in dispute. The Attorney General is not bound by the proposed findings.

(4) *Final determination.* The Secretary and the Attorney General shall review the notification letter and the certificate holder's answer to it, the proposed factual findings made under paragraph (c)(3) of this section, and any other relevant documents or information in their possession. If, after review, the Secretary or the Attorney General determines that the export conduct of a person or entity protected by the certificate no longer complies with the standards set forth in § 325.4(b), the Secretary shall revoke or modify the certificate as appropriate. If the Secretary or the Attorney General determines that the certificate holder has failed to comply with the request for information under paragraph (b) of this section, or has failed to file a complete annual report, and that the failure to comply or file should result in revoca-

tion of modification, the Secretary shall revoke or modify the certificate as appropriate. The determination will be final and will be issued to the certificate holder in writing. The notice to the certificate holder shall include a statement of the circumstances underlying and the reasons in support of the determination. If the Secretary determines to revoke or modify the certificate, the decision shall specify the effective date of the revocation or modification; this date must be at least thirty days but not more than ninety days after the Secretary notifies the certificate holder of his determination. The Secretary shall publish notice in the FEDERAL REGISTER of a revocation or modification or a decision not to revoke or modify.

(d) *Investigative information.* In proceedings under this section, the Attorney General shall make available to the Secretary any information that has been obtained in response to Civil Investigative Demands issued under section 304(b)(3) of the Act. Unless prohibited by law, the Attorney General and the Secretary shall also make available to each other any other information which each is relying upon under these proceedings.

§ 325.11 Judicial review.

(a) *Review of certain determinations.* (1) Any person aggrieved by a final determination of the Secretary under § 325.5, § 325.7, § 325.9, or § 325.10 of these regulations may, within thirty days of the determination, bring an action in an appropriate district court of the United States to set aside the determination on the ground that it is erroneous. If a certificate is denied, the applicant may bring suit within thirty days after the notice of denial is published in the FEDERAL REGISTER, or, if the applicant seeks reconsideration, within thirty days after the Secretary publishes in the FEDERAL REGISTER notice of his determination after reconsideration.

(b) For purposes of judicial review, determinations of the Secretary are final when notice is published in the FEDERAL REGISTER.

(c) *Record for judicial review.* For purposes of judicial review, the record shall include all information presented to or obtained by the Secretary which

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had a bearing on the determination, the determination itself, the supporting statement setting forth the reasons for the determination, and the Attorney General's response to the Secretary indicating concurrence or nonconcurrence.

(d) *Limitation of judicial review.* Except as provided in paragraph (a) of this section, no agency action taken under the Act shall be subject to judicial review.

§ 325.12 Returning the applicant's documents.

(a) Upon the denial or withdrawal of an application for a certificate in its entirety, the applicant may request the return of all copies of the documents submitted by the applicant in connection with the application to the Department of Commerce or the Department of Justice. The applicant shall submit this request in writing to both the Secretary and the Attorney General.

(b) The Secretary and the Attorney General shall return the documents to the applicant within thirty days after they receive the applicant's request.

§ 325.13 Nonadmissibility in evidence.

If the Secretary denies, in whole or in part, an application for a certificate or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence in any administrative or judicial proceeding in support of any claim under the anti-trust laws.

§ 325.14 Submitting reports.

(a) Not later than each anniversary of a certificate's effective date, the Secretary shall notify the certificate holder of the information to be included in the annual report. This report shall contain any changes relevant to the matters specified in the certificate, an update of the information contained in the application brought current to the anniversary date, and any other information the Secretary considers appropriate, after consultation with the Attorney General.

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(b) Not later than forty-five days after each anniversary of a certificate's effective date, a certificate holder shall submit its annual report to the Secretary. The Secretary shall deliver a copy of the annual report to the Attorney General.

(c) Failure to submit a complete annual report may be the basis for modification or revocation of a certificate.

§ 325.15 Relinquishing a certificate.

A certificate holder may relinquish a certificate at any time through written notice to the Secretary. The certificate will cease to be effective on the day the Secretary receives the notice.

§ 325.16 Protecting confidentiality of information.

(a) Any information that is submitted by any person under the Act is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b)(1) Except as authorized under paragraph (b)(3) of this section, no officer or employee of the United States shall disclose commercial or financial information submitted under this Act if the information is privileged or confidential, and if disclosing the information would cause harm to the person who submitted it.

(2) A person submitting information shall designate the documents or information which it considers privileged or confidential and the disclosure of which would cause harm to the person submitting it. The Secretary shall endeavor to notify these persons of any requests or demands before disclosing any of this information.

(3) An officer or employee of the United States may disclose information covered under paragraph (b)(1) of this section only under the following circumstances—

(i) Upon a request made by either House of Congress or a Committee of the Congress,

(ii) In a judicial or administrative proceeding subject to issuance of an appropriate protective order,

(iii) With the written consent of the person who submitted the information,

(iv) When the Secretary considers disclosure of the information to be necessary for determining whether or not